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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/667,014 Confirmation No. 9128
Applicant: John M. Calico
Filed: September 17, 2003
Title: STATOR FOR AN ELECTRIC DEVICE
TC/A.U. 3729
Examiner: Thiem D. Phan
Docket No.: MP-349
Cust. No.: 01342

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REGISTRATION AND PETITIONS
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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PETITION TO THE DIRECTOR

Sir:

This is a Petition to the Director under 37 C.F.R. §§ 1.127¹ and 1.181² from the refusal of the

¹ "§1.127 Petition from refusal to admit amendment.

From the refusal of the primary examiner to admit an amendment, in whole or in part, a petition will lie to the Director under §1.181."

² "§ 1.181 Petition to the Director.

(a) Petition may be taken to the Director:

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent and Interferences or to the court;

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Board of Patent

Primary Examiner to enter Applicant's Amendment After Final Rejection dated April 5, 2006, and is accompanied by the assumed petition fee of \$400.00.³

In the Amendment After Final Rejection, copy attached, Applicant simply sought to make the following correction to claim 31:

"Claim 31 (currently amended) The method of forming an electric motor, comprising the steps of:

forming a plurality of arcuate stator segments, each segment having a concave surface, a convex surface, opposite end surfaces, and a plurality of teeth extending inwardly from said concave surface;

providing a separate electrical winding for each segment, each winding having different portions that are arranged adjacent said concave, convex and end surfaces of the associated segment winding, said winding being adapted to be selectively energized to form a three-dimensional magnetic field about said segment;

Appeals and Interferences, see §41.3 of this title.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§1.111) and a repeated action by the examiner. The examiner may be directed by the Director to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.

(d) Where a fee is required for a petition to the Director the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.

(e) Oral hearing will not be granted except when considered necessary by the Director.

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

(g) The Director may delegate to appropriate Patent and Trademark Office officials the determination of petitions."

³ Applicant's attorney could find no specific reference to the amount of the fee in 37 C.F.R. § 1.17(f), (g) or (h). Hence, the maximum petition fee is submitted herewith out of an abundance of caution. However, if no fee, or a lesser fee is due, the Commissioner is requested to credit any such overpayment to our Deposit Account No. 19-3320.

assembling said segments to form an annular stator; and placing a rotor within said stator, said stator having at least two magnetic poles that are arranged to interact with the magnetic field in said stator."

In an advisory Office Action dated April 19, 2006, copy attached, the Primary Examiner refused entry of Applicant's Amendment After Final Rejection, contending that it raises "new issues that would require further consideration and/or search", and is not "deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal". More particularly, the Examiner said:

"In the proposed Amendment filed on 4/07/06, After Final, the changes to claim 31 by the removal of the limitation '... winding ...' (Claim 31, line 7) broaden the scope of the claim which would raise new issues and require further consideration. Furthermore, the changes to claim 31 now add the limitation of '... segments ...' (Claim 31, line 6). This change narrows the scope of the claim, requiring further consideration and raises new issues. Therefore, the Amendment will not be entered."

The issue at hand is whether the Primary Examiner wrongfully refused entry of Applicant's Amendment After Final Rejection.

Applicant has recently filed a Notice of Appeal in this case.⁴ The error sought to be corrected in claim 31 was first noticed during a recent review in connection with Applicant's appeal in this case. The error is manifestly of a typographical nature. The claim first specifies that each stator segment has a concave surface, a convex surface, opposite end surfaces, and a plurality of teeth. The next clause then calls for a separate winding for each segment, with the further limitation that each winding have different portions that are arranged adjacent said concave, convex and end surfaces.

⁴ Notwithstanding this, the Examiner is thought to still have jurisdiction over this case under 37 C.F.R. § 41.35, which provides in pertinent part:

"§41.35 Jurisdiction over appeal.

- (a) Jurisdiction over the proceeding passes to the Board upon transmittal of the file, including all briefs and examiner's answers, to the Board."

The reference to said "concave, convex and end surfaces" obviously refers to the concave, convex and end surfaces of the segment, as set forth in the first indented clause of claim 31, not the winding. Applicant had simply attempted to make this clear by saying that these were the surfaces of the associated segment, but inadvertently used the word "winding" therein in claim 31. As worded, claim 31 was nonsensical. When Applicant noted the error, he simply wished to correct the word "winding" to be -- segment --, so as to place the claims in better form for appeal.

Claim 31 was first presented for Examination in an Amendment dated June 14, 2005. The original text of claim 31 read as follows:

"31. (New) The method of forming an electric motor, comprising the steps of:

forming a plurality of arcuate stator segments, each segment having a concave surface, a convex surface, opposite end surfaces, and a plurality of teeth extending inwardly from said concave surface;

providing each segment with an electrical winding having different portions that are arranged adjacent said concave, convex and end surfaces, said winding being adapted to be selectively energized to form a three-dimensional magnetic field about said winding;

assembling said segments to form an annular stator; and

placing a rotor within said stator, said stator having at least two magnetic poles that are arranged to interact with the magnetic field in said stator."

Note the claim simply called for the step of "providing each segment with an electrical winding having different portions that are arranged adjacent said concave, convex and end surfaces". In other words, the "of the associated winding" clause was wholly absent from claim 31 as originally presented.

Thereafter, Applicant filed an RCE, to prosecute the subject matter of the newly-presented claims. In a Supplemental Amendment filed on September 9, 2005, Applicant directed entry of claim 31, again without the "of the associated winding" clause:

"31. (Previously Presented) The method of forming an electric motor, comprising the steps of:

forming a plurality of arcuate stator segments, each segment having a concave surface, a convex surface, opposite end surfaces, and a plurality of teeth extending inwardly from said concave surface;

providing each segment with an electrical winding having different portions that are arranged adjacent said concave, convex and end surfaces, said winding being adapted to be selectively energized to form a three-dimensional magnetic field about said winding;

assembling said segments to form an annular stator; and

placing a rotor within said stator, said stator having at least two magnetic poles that are arranged to interact with the magnetic field in said stator."

In the Office Action of September 22, 2005, the Examiner rejected claim 31, contending that a reference to Huang *et al.* taught the step of "providing each segment with an electrical winding (Fig. 6, 37) having different portions arranged adjacent said concave, convex and end surfaces" (Emphasis added). The reference to "said" referred to the concave, convex and end surfaces of the stator segment, not the winding. Thus, the Examiner searched and acted on claim 31 without the "of the associated winding" clause.

In an Amendment dated November 15, 2005, Applicant sought to amend claim 31 so as to readily distinguish from Huang. The changes to claim 31 are shown below:

"31. (Currently Amended) The method of forming an electric motor, comprising the steps of:

forming a plurality of arcuate stator segments, each segment having a concave surface, a convex surface, opposite end surfaces, and a plurality of teeth extending inwardly from said concave surface;

providing ~~each segment with an a separate~~ electrical winding for each segment, each winding having different portions that are arranged adjacent said concave, convex and end surfaces of the associated winding, said winding being adapted to be selectively energized to form a three-dimensional magnetic field about said winding segment;

assembling said segments to form an annular stator; and

placing a rotor within said stator, said stator having at least two magnetic poles that are arranged to interact with the magnetic field in said stator."

In this Amendment, Applicant added the clause "of the associated winding", when such clause

clearly should have been "of the associated segment".

In the recent Office Action of February 9, 2006, the Examiner again rejected claim 31 contending that the Huang *et al.* reference again disclosed this step. The Examiner again made reference to said "concave, convex and end surfaces", and by this referred to the antecedent surfaces of the stator segment.

Thus, the simple fact is that claim 31 contained an inadvertent typographical error. The clause "each winding having different portions that are arranged adjacent said concave, convex and end surfaces of the associated winding" (Emphasis added) should have read "each winding having different portions that are arranged adjacent said concave, convex and end surfaces of the associated segment" (Emphasis added), since the only antecedent for said surfaces was with respect to the stator segment.

Applicant filed an Amendment After Final Rejection to correct this error with his Notice of Appeal. In the Amendment After Final Rejection, Applicant merely sought to correct the typographical error so as to place the claims in better (and proper) form for appeal, as contemplated by 37 C.F.R. §1.116, which provides in pertinent part:

"§ 1.116 Amendments and Affidavits or Other Evidence After Final Rejection and Prior to Appeal

* * *

(b) After a final rejection . . . but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this Title):

* * *

(2) An amendment presenting rejected claims in better form for consideration on appeal may be admitted."

The Examiner's refusal to enter the Amendment on the grounds that it would both broaden and narrow the scope of claim 31 is nonsensical. The only way in which claim 1 could have been fairly understood was that the "of the associated winding" language be read as though it meant "of the associated segment". That is the way in which the Examiner understood it, for he expressly

referred to "said concave, convex and end surfaces" (Emphasis added). Any construction other than that "said concave, convex and end surfaces" (Emphasis added) referred to the concave, convex and end surfaces of the stator segment, would have simply not made sense.

Accordingly, the change is believed to be in the nature of a simple correction of a minor typographical error. The Examiner clearly understood that the portions referred to surfaces on the stator segment, by virtue of his use of the word "said". In addition, the Examiner has already acted on claim 31 without the "of the associated segment winding" language therein. Thus, the correction will not require a new search inasmuch as the Examiner has already searched this matter and purported to act thereon.

The requested change only requires a cursory review by the Examiner (*cf.*, M.P.E.P. §714.13). The correction of the typographical error is a "mere detail", and does not require an additional search or a change in, or reconsideration of, the Examiner's stated ground for rejection. As noted in 2 Horwitz, *Patent Office Rules and Practice*, § 116[B] (2006) [at 1-16]:

"After final rejection, amendments presenting the rejected claims in better form for consideration on appeal may be admitted, Rule 116, *supra*. . . .

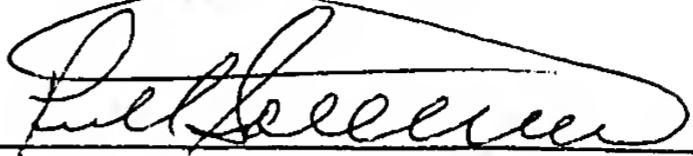
When the proposed claim brings forward no new or unconsidered points except as to mere detail, being merely somewhat more specific than claims which have already been considered, it should be admitted for the purpose of appeal, i.e., in better form for consideration on appeal than the claims under final rejection."

Accordingly, Applicant requests that the Director direct entry of Applicant's Amendment After Final Rejection so as to present claim 31 in better form for appeal.



Respectfully submitted,

PHILLIPS LYTLE LLP

By 

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Attorneys for Applicant

Buffalo, New York

May 3, 2006

CERTIFICATE OF MAILING

I certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on May 3, 2006.

PHILLIPS LYTLE LLP

By 

Peter K. Sommer, Esq.

Reg. No. 26,587

Signed: May 3, 2006

BFLO Doc # 1486979.8



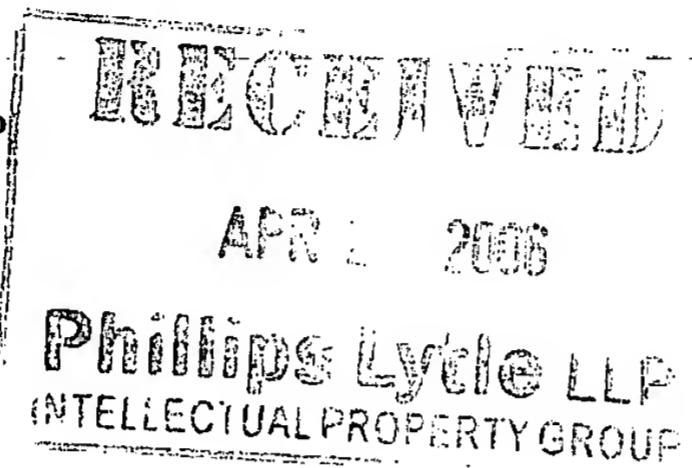
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MAY 09 2006

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,014	09/17/2003	John M. Calico	034726/261916	9128

1342 7590 04/19/2006
PHILLIPS LYTLE LLP
INTELLECTUAL PROPERTY GROUP
3400 HSBC CENTER
BUFFALO, NY 14203-3509



EXAMINER	
PHAN, THIEM D	
ART UNIT	PAPER NUMBER
3729	

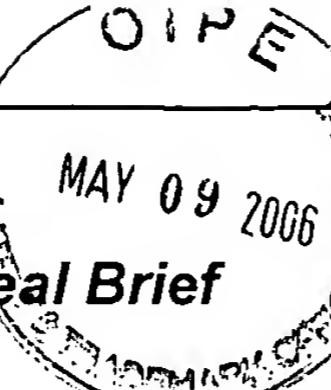
DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED
U.S. PATENT AND TRADEMARK OFFICE
MAY 09 2006
BY PHILLIPS LYTLE LLP

Advisory Action
Before the Filing of an Appeal Brief

MAY 09 2006



Application No.	Applicant(s)
10/667,014	CALICO, JOHN M.
Examiner	Art Unit
Tim Phan	3729

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 07 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires _____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. Applicant's reply has overcome the following rejection(s): _____.
 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 31 and 34-37.

Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. Other: _____


A. DEXTER TUGBANG
PRIMARY EXAMINER

Continuation of 3.

In the proposed amendment filed on 4/07/06, After Final, the changes to claim 31 by the removal of limitation "... winding ..." (Claim 31, line 7) broaden the scope of the claim, which would raise new issues and require further consideration. Furthermore, the changes to claim 31 now add the limitation of "... segment ..." (Claim 31, line 6). This change narrows the scope of the claim, requiring further consideration and raises new issues. Therefore, the amendment will not be entered.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

MAY 09 2006

MAY 10 2006

MAY 11 2006

MAY 12 2006

MAY 13 2006

MAY 14 2006

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NOV 18 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/667,014 Confirmation No. 9128
Applicant: John M. Calico
Filed: September 17, 2003
Title: STATOR FOR AN ELECTRIC DEVICE
TC/A.U. 3729
Examiner: Thiem D. Phan
Docket No.: MP-349
Cust. No.: 01342

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

AMENDMENT AFTER FINAL REJECTION

Sir:

In response to the Office Action mailed February 9, 2006, please amend this application as follows:

Amendments to the Claims are reflected in the Listing of Claims, which begins on page 2 of this paper.

Remarks/Arguments begin on page 5 of this paper.

Appl. No. 10/667,014
Amendment dated April 5, 2006
Response to Office Action of February 9, 2006

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claims 1-30 (cancelled)

Claim 31 (currently amended) The method of forming an electric motor, comprising the steps of:
forming a plurality of arcuate stator segments, each segment having a concave surface, a convex surface, opposite end surfaces, and a plurality of teeth extending inwardly from said concave surface;

providing a separate electrical winding for each segment, each winding having different portions that are arranged adjacent said concave, convex and end surfaces of the associated segment winding, said winding being adapted to be selectively energized to form a three-dimensional magnetic field about said segment;

assembling said segments to form an annular stator; and
placing a rotor within said stator, said stator having at least two magnetic poles that are arranged to interact with the magnetic field in said stator.

Claims 32-22 (cancelled)

34. (Previously Presented) The method as set forth in claim 31 wherein said winding is embedded within the associated stator segment.

35. (Previously Presented) The method as set forth in claim 31 wherein said winding is mounted on the associated stator segment.

36. (Previously Presented) The method as set forth in claim 31 wherein said rotor has a permanent

Appl. No. 10/667,014
Amendment dated April 5, 2006
Response to Office Action of February 9, 2006

magnet, and wherein said magnetic poles on said rotor are created by the poles on said magnet.

37. (Previously Presented) The method as set forth in claim 31 and further comprising the additional step of:

supplying a single phase current to each stator winding that is different from the phase of the current supplied to the winding of each adjacent segment.

Appl. No. 10/667,014
Amendment dated April 5, 2006
Response to Office Action of February 9, 2006

Remarks/Arguments

This Amendment is responsive to the Office Action of February 9, 2006.

This Amendment amends claim 31 to correct an obvious error; namely, that each winding has different portions that are arranged adjacent the concave, convex and end surfaces of the associated segment (not winding).

The present Amendment accompanies a Notice of Appeal of claims 31 and 34-37, and simply amends independent claim 31 in a minor way to correct the obvious error. Entry and consideration of this Amendment is expressly authorized by 37 C.F.R. § 1.116, which provides in pertinent part:

"§ 1.116 Amendments and Affidavits or Other Evidence After Final Rejection and Prior to Appeal

* * *

(b) After a final rejection . . . but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this Title):

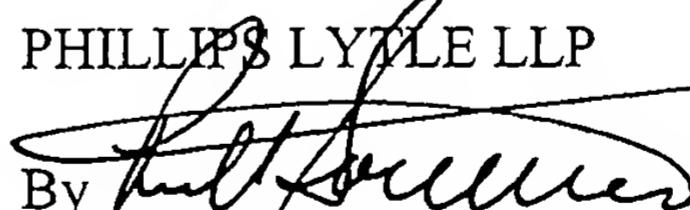
* * *

(2) An amendment presenting rejected claims in better form for consideration on appeal may be admitted."

Accordingly, Applicant requests that this amendment be entered so as to present the claims in better form for appeal.

Respectfully submitted,

PHILLIPS LYtle LLP

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Appl. No. 10/667,014

Amendment dated April 5, 2006

Response to Office Action of February 9, 2006

Buffalo, New York

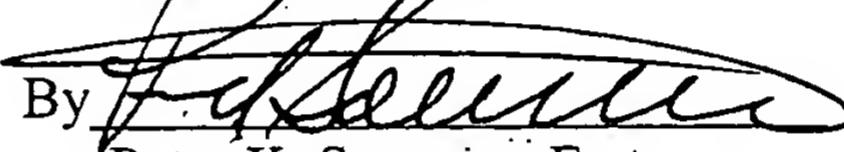
April 5, 2006

CERTIFICATE OF MAILING

I certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on April 5, 2006.

PHILLIPS LYTL LLP

By



Peter K. Sommer, Esq.

Reg. No. 26,587

Signed: April 5, 2006

BFLO Doc # 1486979.7

PHILLIPS LYTTLE LLP

No 117453



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FEE FOR NOTICE OF APPEAL RE U.S. PAT.
APPL. SER. NO. 10/667,014 (STATOR FOR
AN ELECTRIC DEVICE)

PETER K. SOMMER

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DATE	CHECK NO.	AMOUNT	
19184	117453	*****500.00	

PAY FIVE HUNDRED AND 00/100 DOLLARS
TO THE
ORDER OF

U.S. PATENT AND TRADEMARK OFFICE

VOID AFTER 180 DAYS

SIGNATURE: *[Signature]*
STYLING: *[Signature]*

117453 1020006700A175077031m710

[Signature]
AUTHORIZED SIGNATURE